SUPREME COURT, U.S.
FILED

No. (1) 01091 JAN 2 2001

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In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

EDWARD CARLSON,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether an anonymous caller's tip, that a possibly armed and suicidal person is at a specific public location, constitutes a sufficiently dangerous situation so as to permit a peace officer to make a temporary investigatory stop without a showing of reliability.

Whether an anonymous caller's tip, whose content provides specific details that severely narrow the possible class of callers, provides a lawful basis for peace officers to act on that tip.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, prays for a Writ of Certiorari to review the judgment and order of the Illinois Appellate Court, First Judicial District, Second Division, which was entered on May 9, 2000.

OPINION BELOW

The opinion of the Illinois Appellate Court, First Judicial District, Second Division, which suppressed the evidence and reversed respondent's conviction, was entered on May 9, 2000 and is reported at 313 Ill.App.3d 447, 729 N.E.2d 858 and reproduced in Appendix A of this Petition.

The order of the Supreme Court of Illinois denying leave to appeal, entered on October 4, 2000, is not reported and is reproduced in Appendix B of this Petition.

The order of the circuit court denying respondent's motion to suppress is unreported.

STATEMENT OF JURISDICTION

The order and judgment of the Illinois Appellate Court, First Judicial District, Second Division, was entered on May 9, 2000. No Petition for Rehearing was filed. On October 4, 2000, the Illinois Supreme Court denied a Petition for Leave to Appeal. This Petition for a Writ of Certiorari is filed within 90 days of that order as required by Rule 13(1) of the Rules of the Supreme Court. The decision of the Illinois Appellate Court, First Judicial District, Second Division, was explicitly based on federal Constitutional law, in particular on the

Fourth Amendment. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

Respondent, Edward Carlson, was charged with one count of Unlawful Use of Weapon under Information Number 99-C3-30061. (C.L. 31-32) Respondent filed a pre-trial Motion to Quash Arrest and Suppress Evidence and a hearing was held on this motion on December 3, 1998. (R. V1-1, C.L. 25-26)

Motion to Suppress

Two witnesses were called upon to testify at the suppression hearing, the respondent and Officer Brad Hollister. (V1-8, 20) Their versions of the events leading up to respondent's seizure were essentially the same. (V1-36, 37) Around midnight of October 11, 1998, the police received a call on their 911 dispatch line that a possibly suicidal person was on the pay phone outside

of the Gold Eagle Liquor Store at 725 Golf Road in Hoffman Estates. (V1-21, 24) The caller gave a brief description of this person, including his name (Edward), and said that he may have a gun in his possession or in his car. (V1-21, 22) In response, Officer Hollister drove to that location and saw a person, who matched the description, speaking with someone on the pay phone next to the closed liquor store. (V1-22, 25) Officer Hollister identified himself, exited his car, pointed his weapon at this person "for my personal safety as well as others" and asked him if his name was Edward. (V1-22, 26) When the respondent acknowledged that he was Edward, Officer Hollister asked him to lie prone on the ground. (V1-22) Officer Hollister then asked respondent if he had a weapon in his possession. (V1-23) Respondent said that he did not have a weapon on him but he did have one in the car. (V1-23) The respondent was then handcuffed and a subsequent search revealed a gun in the car as well as a small quantity of marijuana and a cannabis pipe on respondent's person. (V1-13, 23)

After both sides rested their case and presented their arguments, the trial judge found the testimony of both the officer and the respondent to be credible. (V1-36, 37) The trial judge ruled that, given the circumstances presented, the officer's conduct was appropriate because:

> "[h]e has to be concerned about his safety and the safety of the defendant and anyone else that may be in the area. Under those circumstances, he had a right to confine the defendant. There were certainly reasonable articulable circumstances which raised the situation to at least a suspicion. It gave him a basis to investigate the

> matter and he took the steps that he took. . . . Under all of those facts, I find that the police conduct was reasonable. The defendant's rights were not violated." (V1-37, 38)

Accordingly, having found that respondent was properly subjected to a temporary investigative seizure, the trial judge denied defendant's motion to suppress. (V1-39)

Trial

After the denial of respondent's suppression motion, a bench trial commenced on April 19, 1999. (V2-2) The testimony of the two witnesses, Officers Hollister and Sullivan, substantially paralleled the evidence from the suppression hearing. Officer Hollister added that the 911 dispatcher "had received a call of a subject talking on a pay phone who was talking to his girlfriend, telling her he was thinking about. . . . killing himself, committing suicide." (V2-12) Officer Sullivan added that, inside the respondent's car, he recovered a .22 caliber semiautomatic pistol, with one bullet in the chamber and three bullets in the clip, and one box of .22 caliber bullets. (V2-31, 32, 27) Finally, Officer Hollister testified that, because of the suicide call, the fire department paramedics were dispatched and "staged" nearby until it was safe for them to come in and transport the respondent to the Hoffman Estates Medical Center Hospital. (V2-27) After hearing all the evidence, the trial judge found the respondent guilty of unlawful use of weapon and sentenced him to 12 months of conditional discharge.

Appeal

Following his conviction, the respondent appealed to the Illinois Appellate Court. (C.L. 62) After all briefs had been filed and oral arguments heard, the appellate court granted leave to Petitioner to cite additional authority and analyze the present issue as a temporary investigative stop conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). (Supp. C.L. 2-4) Later, while the case was still pending, this Court rendered its decision in *Florida v. J.L.*, 529 U.S. 266 (2000). In light of this, the Illinois Appellate Court "asked the parties to comment on the effect of that decision on this case." (App. 2) Both parties complied with the appellate court's request and filed supplemental arguments analyzing the respondent's temporary seizure in the instant case in light of *Florida v. J.L.* (Supp. C.L. 16-24) On May 9, 2000, the Illinois Appellate Court issued its opinion and, relying solely on the Court's decision in *Florida v. J.L.*, suppressed the evidence and reversed respondent's conviction.

REASONS FOR GRANTING THE WRIT

I.

THE PRESENT ISSUES HAVE BEEN SPECIFICALLY LEFT OPEN BY THIS COURT IN *FLORIDA v. J.L.*

The instant case presents this Court with the perfect opportunity to address two questions that it posed and left open in *Florida v. J.L.*, 529 U.S. ___ (2000). First, in *Florida v. J.L.*, Justice Ginsburg, writing for the Court, acknowledged that ". . . the danger alleged in an anonymous tip might be so great as to justify a search

without a showing of reliability. . ." but noted that "[t]he facts of this case do not require us to speculate about the[se] circumstances. . ." 529 U.S. at ___. The case at bar, unlike *Florida v. J.L.*, squarely presents this Court with these circumstances. Specifically, a midnight telephone tip that a possibly armed and suicidal person is speaking on a public pay phone next to a liquor store. Thus, the facts in the present case will enable this Court to reach the question regarding which anonymous tips describe circumstances so inherently dangerous that they demand immediate police action without a showing of reliability.

Second, in the concurring opinion, Justice Kennedy noted the following:

> It seems appropriate to observe that a tip might be anonymous in some sense yet have certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action. One such feature, as the Court recognizes, is that the tip predicts future conduct of the alleged criminal. There may be others. . . . These matters, of course, must await discussion in other cases, where the issues are presented by the record. 529 U.S. at ___.

The record in the case at bar squarely presents the Court with this precise issue. Here, the police received an anonymous caller's tip that a person by the name of Edward, who may have a gun on his person or in his car, was speaking to his girlfriend from a public pay phone at a specific location and "telling her he was thinking about. . . . killing himself, committing suicide." (V2-12) As the Illinois Appellate Court acknowledged,

the nature of the information provided by this call greatly narrowed the likely class of callers to a roommate of respondent's girlfriend or someone who was privy to the conversation. (App. 4) Had the caller's information been false, the police could have easily discovered the caller's identify through a simple investigation. (This is the exact opposite of *Florida v. J.L.* where any person walking or driving down the street could have given the bare-boned tip about J.L.). Therefore, the present case provides this Court with the perfect vehicle to address itself to the question of whether the police can lawfully act when the information provided by an anonymous tip narrows the likely class of informants.

II.

THE ILLINOIS APPELLATE COURT'S OPINION CONCERNS IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW WHICH SHOULD BE DECIDED BY THIS COURT TO GIVE NEEDED GUIDANCE TO LOWER COURTS AND LAW ENFORCEMENT OFFICIALS THROUGHOUT OUR NATION.

Every day, law enforcement officials throughout our country receive anonymous telephone tips concerning individuals in public places that are contemplating suicide. Frequently, these calls also indicate that the suicidal subject may be armed. When such situations arise, it is important for law enforcement officials to know what quantum and nature of information is required before they can act. For the following reasons, as well as those in Section I, *supra*, the present case affords this Court an ideal opportunity to visit and answer this important question.

First, in basing its decision solely on *Florida v. J.L.*, it is beyond question that the Illinois Appellate Court decided the present case under federal Constitutional law. (App. 1) *See Michigan v. Chesternut*, 486 U.S. at 571, n.3. Second, in *Florida v. J.L.*, this Court noted that "[w]e speak in today's decision only of cases in which the officers' authority to make the initial *stop* is at issue." 529 U.S. at ___. (Emphasis added) Similarly, in the case at bar, the Illinois Appellate Court, in the first sentence of its opinion, limited its ruling to the propriety of the initial seizure (stop) of the respondent. (App. 1) Third, the facts leading up to the stop of the respondent are essentially undisputed, thus permitting *de novo* review by this Court. *See Ornelas v. United States*, 517 U.S. 690 (1996). Fourth, the case at bar raises significant public safety considerations. For example, in making his ruling at the suppression hearing, the trial judge twice stated that the officer's actions were proper because, *inter alia*, they were necessary "for the safety of the defendant." (V1-37, 38) Thus, the trial judge's ruling reflected the fact that the primary purpose for the officer's actions was to prevent the respondent from killing himself. In other words, by stopping and disarming a possibly suicidal person, the officer was primarily on a life saving/public safety mission rather than a criminal evidence gathering mission. *See City of Indianapolis v. Edmonds*, ___ U.S. ___, 121 S.Ct. 447 (2000). Fifth, Professor Wayne R. LaFave has discussed the issue at bar and stated the following:

> It must be recognized that stoppings for investigation are not all of one kind and that in some instances the need for immediate action may be so great that substantial doubts about

> the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action.

4 Wayne R. LaFave, *Search and Seizure*, sec. 9.4(h) at 229 (3rd Ed. 1996). Sixth, the instant case requires this Court's immediate attention because any delay in resolving the present issues will only yield more erroneous decisions such as the present one and that in *Rivera v. Florida*, ___ So.2d ___, 2000 Fla. App. Lexis 14597, 25 Fla. Law W.D. 2609 (Nov. 8, 2000) (Court holds that report by unidentified motorist to police that he had just witnessed a gun battle in a public area between occupants of two different cars held to be insufficiently dangerous to justify an investigative stop of these vehicles.)

Finally, the present case merits this Court's attention because, as matters now stand in Illinois, when a peace officer responds to the scene of a possibly armed and suicidal person, he finds himself in a most unenviable position. He may either stand helplessly by and hope that the suspect does not kill himself before the officer can detect some fact that will permit him to seize the suspect, or he may attempt to make a consensual encounter and hope that the suicidal suspect, who has nothing to lose, does not decide to take the officer with him. In light of this, the Petitioner implores the Court to grant the instant petition and rectify this untenable state of affairs.

CONCLUSION

For all the foregoing reasons, the Petitioner respectfully prays that this Honorable Court grant the instant petition for Writ of Certiorari to review the judgment of the Illinois Appellate Court, First District, Second Division.

Respectfully submitted,

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APPENDIX A

[Entered May 9, 2000]

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-99-1660

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
	)	
v.	)	Honorable NICHOLAS PAMARO and
	)	
	)	
EDWARD CARLSON,	)	JOHN J. SCOTILLO,
	)	Judges Presiding.
Defendant-Appellant.	)	

JUSTICE McNULTY delivered the opinion of the court:

In this case we must determine whether the prosecution presented sufficient evidence to justify the seizure of the defendant. We find that a recent decision of the United States Supreme Court controls the resolution of this issue. Following *Florida v. J.L.*, 529 U.S. 266, 146 L.Ed.2d 254, 120 S.Ct. 1375 (2000), we hold that the evidence derived from the seizure must be suppressed and the conviction reversed.

Sergeant Brad Hollister arrested Edward Carlson around midnight on October 11, 1998, charging him with unlawful use of a weapon. At the hearing on defendant's motion to quash the arrest, Hollister said that

"[t]here was a call to our 911 dispatch of a possible suicidal subject on the pay phone" at a specified location. Hollister added that the dispatcher briefly described the subject, named Edward, and said he might have a gun. When Hollister arrived at the specified location, he saw defendant talking on a pay phone. Hollister testified:

> "I identified myself, got out of my car. I asked the subject if his name was Edward. He replied yes. I had my weapon pointed at him for my safety for the possibility he had a weapon. And I asked him to lie prone on the ground."

Hollister then asked if defendant had a weapon. Defendant said he did not have one on him, but he had one in his car. Backup officers took defendant's keys and found a gun under the front seat of the car the keys opened.

Defendant's testimony effectively corroborated Hollister's testimony. The court found both witnesses credible and held that Hollister acted reasonably under the circumstances. On that basis the court denied the motion to quash the arrest and suppress evidence seized at the time of the arrest.

At the bench trial Hollister added that the dispatcher said the subject "was talking to his girlfriend" on the payphone. The court found defendant guilty of unlawful use of a weapon and sentenced him to 12 months of conditional discharge.

After oral argument on appeal, the Supreme Court decided *J.L.*. We asked the parties to comment on the effect of that decision on this case. In *J.L.* someone called the police and told them a young black man, at a specified location and wearing a plaid shirt, had a gun. Officers went to the scene where they found a

young black man wearing a plaid shirt. Although the man made no threatening or suspicious movements, police frisked him and seized a gun. The prosecution charged him with unlawful possession of a firearm. The trial court granted the defendant's motion to quash. The Supreme Court affirmed, finding that the evidence did not show sufficient indicia of reliability to justify the stop and frisk. The Court explained:

> "[T]he officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller. * * *
>
> * * * The anonymous call * * * provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting [the defendant] of engaging in unlawful conduct * * *. * * * * * *
>
> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *J.L.*, 529 U.S. at ___, 146 L.Ed.2d at 260-61, 120 S.Ct. at 1378-79.

The concurrence emphasized that the "record [did] not show whether some notation or other documentation of the call was made either by a voice recording or tracing

the call to a telephone number." *J.L.*, 529 U.S. at ___, 146 L.Ed.2d at 263, 120 S.Ct. at 1381 (Kennedy, J., concurring).

Here, too, the prosecution failed to present evidence of sufficient indicia of reliability to justify the stop and frisk. The record includes no evidence that the police knew the identity of the caller or whether the police could find the caller's phone number or address.

The prosecution contends that the call was not anonymous because Hollister reported that the dispatcher said the defendant's girlfriend called the station. The argument mischaracterizes the record. Hollister said nothing at all about the caller or even whether the dispatcher told him who called. Hollister said only that the dispatcher reported that the subject was talking to his girlfriend on the pay phone. Even if we assume the dispatcher told Hollister the truth and the caller had reason to say defendant was talking to his girlfriend, the evidence permits the inference that a roommate or any other person who knew the putative girlfriend could have made the call. The evidence does not show the caller could in any way be found again or held accountable if the information proved to be false. In this case, as in *J.L.*, the prosecution did not present evidence of tracing the call or a tape recording of the call or any other evidence to distinguish the call here from an anonymous tip.

The prosecution also argues that, in this case, unlike *J.L.*, the police did not seize defendant until they confirmed that he had a gun.

> "[A] seizure of a person * * * occurs the moment a person's freedom to walk away from a policeman is restrained, even though a restraint falls

> short of an arrest. [Citation.] Restraint can be deduced from a showing of actual or threatened force on the part of the police officers." *People v. Mills*, 115 Ill. App. 3d 809, 813, 450 N.E.2d 935 (1983).

Hollister made a threat of force by drawing his gun as he first approached defendant. He asked only if defendant's name was Edward before ordering defendant to lie on the ground. At this point the State had seized Edward, at least to the extent of stopping him for questioning and searching him for weapons. As in *J.L.*, defendant here was not doing or saying anything suspicious or threatening. Based solely on the information from the dispatcher, Hollister pointed a gun at defendant and ordered him to lie on the ground. Under *J.L.*, the evidence cannot justify the seizure. See also *People v. Lawson*, 298 Ill. App. 3d 997, 700 N.E.2d 125 (1998).

The prosecution presented neither the tape nor the dispatcher nor any other admissible evidence to prove that an accountable person called the police. The anonymous tip lacked sufficient indicia of reliability to justify the seizure of defendant. The trial court should have quashed the stop and suppressed any evidence then obtained. Without the evidence obtained following the investigatory stop, the prosecution had no proof that defendant used a weapon unlawfully. Accordingly, the judgment of the trial court must be reversed.

Reversed.

COUSINS, P.J., and McBRIDE, J., concur.

APPENDIX B

(Letterhead of)

SUPREME COURT OF ILLINOIS
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October 4, 2000

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No. 89676 — People State of Illinois, petitioner, v. Edward Carlson, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for Leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 26, 2000.

(2)

No. 00-1091

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ILLINOIS,

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v.

EDWARD CARLSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS APPELLATE COURT'S DECISION IN *CARLSON* IS CONSISTENT WITH THE PRECEDENT ESTABLISHED BY THIS COURT.

The Illinois Appellate Court's decision in *People v. Carlson*, 313 Ill. App. 3d 447, 729 N.E.2d 858 (1st Dist. 2000) is consistent with the precedent established by this Court. In *Florida v. J.L.*, this Court held that an anonymous tip that a person is carrying a gun, without more, is insufficient to justify a police officer's stop and frisk of that person. 529 U.S. __, 120 S. Ct. 1375 (2000). In this case, a police officer seized Edward Carlson (Carlson) at gunpoint with solely an anonymous tip as the justification. Following *J.L.*, which was decided subsequent to the trial court's denial of Carlson's motion to quash arrest, the Illinois Appellate Court held the tip was insufficient to justify the seizure and ordered the evidence suppressed.

In *Carlson*, the police acted solely on the basis of a tip from an unknown and unaccountable informant. When the officer arrived at the scene, Carlson was talking on a pay phone and he had only that phone in his hands. (Volume 1, Common Law Record, pg. 24). Carlson was violating no laws. (V1, R. 12). Despite no observable criminal conduct, the officer immediately ordered Carlson to the ground at gunpoint. (V1, R. 26). The officer's actions were based solely on the information he received in the dispatch that Carlson "may" have a weapon on him or in his car. (V1, R. 26). Any additional evidence or information gathered by the officer occurred only after Carlson was ordered to the ground at gunpoint.

The undisputed facts show the officer observed nothing which would have led him to believe Carlson carried a weapon. Carlson made no threatening or unusual movements. He did not attempt to flee in response to the officer's arrival. Carlson was simply talking quietly on the telephone. (V1, R. 12). While the tip apparently enabled the police to identify Carlson, it did not demonstrate any reliability in its assertion of illegality. The State presented no recording of the telephone tip and no corroboration of any illegality. It never established the identity or reliability of the caller. Furthermore, the tipster was uncertain whether Carlson even had a gun. The officer testified the dispatch indicated Carlson "may" have a weapon in his possession or in his car, with absolutely no indication that this information came from an individual with any personal knowledge. (V1, R. 23).

Effectively, Petitioner wants this Court to create a general firearm exception regarding searches performed pursuant to anonymous tips. The Court rejected precisely this argument in *J.L.* 529 U.S. at __, 120 S. Ct. at 1381. Petitioner cites no facts that distinguish the present matter from *J.L.*, a matter decided by this Court only last term. Petitioner provides no basis for this Court to reconsider and reverse its ruling in *J.L.* Similarly, Petitioner fails to distinguish this case from *People v. Lawson*, an Illinois case cited by the First District Appellate Court which stands for the unremarkable proposition that the source and reliability of dispatches upon which an officer acts must be established. 298 Ill. App. 3d 997, 700 N.E.2d 125 (1st Dist. 1998).

The Fourth Amendment protects citizens from unreasonable seizures and searches. *U.S. Const. amend IV.* Warrantless searches and seizures are per se unreasonable. Petitioner cites the case of *City of Indianapolis v. Edmonds*

in its efforts to provide a lawful justification for the seizure and search of Carlson. *Petition, page 8. Edmonds* dealt with a vehicle checkpoint. __ U.S. __, 121 S. Ct. 447 (2000). At no point does *Edmonds* hold that an anonymous tip, without more, justifies a warrantless seizure and search of a selected individual at gunpoint. *Edmonds* certainly does not condone or justify a search absent reasonable suspicion or probable cause. Given this holding, *Edmonds* is inapplicable to the present case and provides no justification for the officer's actions in regard to Carlson.

Petitioner attempts to distinguish this matter from *J.L.* by arguing the anonymous tip came from a friend or roommate of Carlson's girlfriend. *Petition, page 7.* Previously, Petitioner asserted the source of the anonymous tip was Carlson's girlfriend. (Supplemental Common Law Record, pg. 22-23). The source of the alleged tip is not a matter of record. Petitioner misleads this Court when it suggests the identity of the anonymous tipster was established. Petitioner attempted to make this same argument in front of the First District Appellate Court and that Court criticized the Petitioner for mischaracterizing the record. *Carlson*, 313 Ill. App. 3d at 449, 729 N.E.2d at 860.

II.

PETITIONER WAIVED BOTH ITS *TERRY* AND "LIFE SAVING/PUBLIC SAFETY" ARGUMENTS BY FAILING TO PROPERLY PRESERVE AND ARGUE THEM IN THE ILLINOIS COURTS.

Petitioner waived both its *Terry* and "life saving" arguments by failing to properly preserve them. Petitioner argues that the trial court ruled the seizure and search was a "life saving/public safety mission" by the officer, not a criminal evidence gathering mission. *Petition, page 8.* The trial court never distinguished or noted a primary purpose for the seizure and search. It simply ruled the officer's actions were reasonable. (V1, R. 38). Petitioner failed to advance its "life saving" theory regarding the purpose for the armed seizure and search of Carlson in any previous pleading to any court. As such, it did not properly preserve the issue for review on the merits by this Court.

Similarly, Petitioner did not argue *Terry* in the trial court. It did not mention *Terry* as a justification for the seizure and search in its written brief to the Illinois Appellate Court. (Supp. R. 3-4). In fact, it did not raise *Terry* until after oral arguments began in the Appellate Court. *Id.* Respondent argued then and continues to maintain that by failing to include its *Terry* argument within its written brief, Petitioner waived the issue. (Supp. R. 12).

III.

THIS COURT, IN *J.L.*, REJECTED PETITIONER'S POLICY ARGUMENTS RELATING TO SEARCHES PERFORMED PURSUANT TO ANONYMOUS TIPS WHICH ALLEGE THE POSSESSION OF FIREARMS.

This Court established in *J.L.* that an anonymous tip lacking any indicia of reliability does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm. 529 U.S. at __, 120 S. Ct. at 1381. In arriving at its decision, the Court acknowledged the dangers of firearms and the threat that armed criminals pose to public safety. *Id.* at __, 120 S. Ct. at 1379. Petitioner ignores this holding and persists in arguing that a general "firearm exception" should be crafted which imposes no reliability testing because of the dangers of guns. In rejecting this argument in *J.L.*, this Court ruled that such an exception would go too far in subjecting citizens to intrusive, embarrassing police searches simply on the basis of an anonymous call. *Id.* at __, 120 S. Ct. at 1381. The Fourth Amendment is not so easily satisfied.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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(3)

No. 00-1091

Supreme Court, U.S.
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In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

EDWARD CARLSON,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

REPLY BRIEF FOR PETITIONER

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ARGUMENT

In its petition, the State of Illinois presented this Court with a cornucopia of reasons why the instant petition should be granted. The Respondent has not challenged the majority of those reasons. For example, the Respondent does not argue with the fact that the Illinois Appellate Court decided the present case under federal constitutional law. Nor does he disagree with the fact that the two issues posed by Petitioner are important and that they have been specifically left open by this Court. Further, Respondent does not dispute that the instant case is limited to the stop (seizure), and not the subsequent search, of Respondent or that this case is subject to *de novo* review by this Court. Finally, Respondent does not quarrel with Professor Wayne R. LaFave's statement in his treatise, nor does he question Petitioner's assertion that the ruling in *Rivera v. Florida*, 771 So.2d 1246 (2000), is erroneous. Rather, the Respondent posits only three reasons why this Court should not grant the present petition. However, each of theses reasons is meritless and should not deter this Court from directly addressing these important questions.

1. The first argument that Respondent presents against the granting of the instant petition is that the Illinois Appellate Court decided the present case correctly because the facts presented here are the same as those in *Florida v. J.L.*, 529 U.S. 266 (2000). As support for this argument the Respondent states that "[t]he officer's actions (in stopping Respondent) were based *solely* on the information he received in the dispatch that [Respondent] 'may' have a weapon on him or in his car" and that

the "Petitioner cites *no* (other) facts that distinguish the present matter from J.L. . . . .". (Op. Cert. pp. 1, 2) (emphasis added) In making these statements, the Respondent ignores the record. The evidence in the trial court unequivocally established that, in addition to the information about the gun, the police were told that Respondent was talking to his girlfriend from a public pay phone and "telling her he was thinking about . . . killing himself, committing suicide." (V2-12) In short, the combined information about the gun and suicide established that Respondent was a danger to himself and to the public at-large. It is this critical information from the caller, to which Respondent turns a blind eye, that distinguishes the present case from *Florida v. J.L.*. There can be no question that a possibly armed and suicidal person in a public place is the consummate "ticking time-bomb". It is the presence of this inherently dangerous situation, which is too great to ignore, that requires immediate police action even without a showing of reliability.

The Respondent goes on to assail the Petitioner by stating that "[t]he source of the alleged tip is not a matter of record. Petitioner misleads this Court when it suggests the identify of the anonymous tipster *was* established." (Op. Cert. p. 3) (emphasis added) This assertion is baseless and not well taken by Petitioner. At no time did the Petitioner state or suggest in the petition that the caller's identity *was* established. There was no need for the police to do so because the caller's information was true. The Petitioner simply stated in the petition that the nature of the information provided by the caller "greatly narrowed the likely class of callers" and that the police

"could have" discovered the caller's identity through an investigation if the information had been false. (Pet. p. 6-7) It is therefore clear that Respondent's initial argument is meritless and presents no reason why this Court should not grant the instant petition.

2. The second reason that Respondent puts forth, so as to prevent further review by this Court, is that the Petitioner has waived the *Terry* and "public safety" arguments by not presenting them below. *See Terry v. Ohio*, 392 U.S. 1 (1968). The Petitioner is at a loss to understand how the Respondent can seriously claim that these issues have been waived for review. First, in presenting his argument to the trial judge, counsel for Respondent stated that "I suggest that perhaps a *Terry* stop, an inquiry of Mr. Carlson, questioning without weapons drawn, without being in custody may have been appropriate." (V1-36) Second, the trial judge indeed ruled that the officer made a proper *Terry* stop because "[t]here were certainly reasonably articulable circumstances which raised the situation to at least a suspicion." (V1-37) Third, although the Petitioner did not mention *Terry* in the initial appellate court brief, the Petitioner later supplemented this brief with additional authority and analyzed the present issue as a temporary investigative stop pursuant to *Terry v. Ohio*. (Supp. C.L. 2-4) Fourth, pursuant to the Illinois Appellate Court's request, the Petitioner filed a supplemental argument and analyzed the propriety of the *Terry* stop in the present case in light of *Florida v. J.L.* (Supp. C.L. 16-24) Fifth, the Illinois Appellate Court's decision is based entirely on *Florida v. J.L.*, which in turn is grounded in *Terry*. Sixth, as

Respondent acknowledges, inherent in *Terry* are this Court's concerns for "public safety". (Op. Cert. p. 5) Finally, the trial judge's finding indicates that the officer was concerned about "public safety" because he acted out of concern for "the safety of the defendant and anyone else that may be in the area." (V1-37) Therefore, there can be no question that the *Terry* and public safety issues, which go hand-in-hand, have not been waived. Accordingly, this is no reason for this Court to deny review.

3. The Respondent's third and final attempt to preclude review by this Court is his assertion that the Petitioner ignores this Court's holding in *Florida v. J.L.* and ". . . persists in arguing that a general 'firearms exception' should be crafted which imposes no reliability testing because of the dangers of guns" and that "Petitioner provides no basis for this Court to reconsider and reverse its ruling in J.L.". (Op. Cert. pp. 2, 3) In making these assertions, Respondent either completely misunderstands, or chooses to ignore, the Petitioner's arguments. The Petitioner emphatically states that nowhere in the petition is it requested that this Court reconsider, much less reverse, its holding in *Florida v. J.L.* This Court has already decided the "firearms exception" question and the Petitioner has no quarrel with this Court's ruling. What the Petitioner is requesting is that this Court explore and flesh out two of the questions posed by this Court, which the factual matrix of *Florida v. J.L.*, did not present. Specifically, the issues concerning the "danger" and "narrowing the class of likely informants" that were raised by this Court.

In sum, the Respondent has presented no real reasons for this Court to decline review of the important issues posed by the instant petition. Additionally, the Petitioner points out that, not only are the issues presented here important, but they are timely. For example, had a similar anonymous telephone tip been made to the Washington D.C. police about a possibly armed and suicidal person outside the White House, then the police, according to the Illinois Appellate Court, would have been powerless to conduct a temporary investigative stop of that person prior to him pulling out his gun and shooting. Petitioner submits that this is untenable and that the present case presents this Court with the perfect vehicle to address and rectify this situation. Accordingly, the Petitioner respectfully urges this Court to accept the instant petition.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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